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PATENT APPLICATION  
09/657,068

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:      Kenneth M. Buckland  
Serial No.:                      09/657,068  
Filing Date:                    September 7, 2000  
Examiner:                       Robert W. Wilson  
Art Unit:                        2661  
Title:                            METHOD AND SYSTEM FOR PROCESSING  
                                     TRAFFIC IN AN ACCESS NETWORK

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action mailed January 11, 2006, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005. Pursuant to the Official Gazette Notice, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. The Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1, 3, 5, and 10 currently stand rejected under 35 U.S.C. §102(e) as being anticipated by Johnstone. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of anticipation. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of January 11, 2006 and the Final Action of October 17, 2005, the Examiner indicates that the Johnstone patent discloses at FIGURES 1 and 2 that ingress traffic is aggregated into combined traffic streams by a high end IP router 120 or 205. Thus, the Examiner admits that the Johnstone patent merely combines the ingress traffic by bundling into multiple traffic streams. This becomes readily apparent as there is no aggregation performed by the IP routers 120 and 205. The Johnstone patent merely discloses the use of a multiplexer that places DS1 facilities into a DS3 facility prior to transport to IP routers 120 and 205. As those skilled in the art know, a DS3 stream merely carries the DS1 streams as separate units. As a result, multiple separate DS1 streams exist in the DS3 carrier of the Johnstone patent and there is no aggregation of the DS1 streams with each other into a single combine traffic stream as required by the claimed invention. The Examiner has not cited any portion of the Johnstone patent that discloses aggregation of multiple

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ingress traffic streams into a single combined traffic stream let alone without regard to destination addresses of packets in the ingress traffic streams. The Examiner merely makes subjective assumptions that the system of the Johnstone patent performs what is provided in the claims without any objective support from the Johnstone patent. Accordingly, the Examiner has not shown that the Johnstone patent discloses each and every limitation of the claimed invention as is required to show anticipation. Independent Claims 16, 20, and 26 have similar limitations as found in Claim 1 and described above to be patentably distinct from the Johnstone patent.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Office Action of October 17, 2005 to establish a prima facie case of obviousness of the claims in the Application rejected under 35 U.S.C. §103(a). There has been no mention of the three criteria for a prima facie case of obviousness as spelled out in M.P.E.P. §2143. The Examiner has not cited any language from the prior art that would suggest that the Johnstone patent can be combined with any of the other cited references as proposed. The Examiner only provides a baseless subjective and conclusory "it would have been obvious" statement for combining the Johnstone patent with the other cited references without providing any objective reasoning or citing any evidence of record to support such a position. The Examiner has not provided any reasons how the proposed combination of the Johnstone patent with the other cited references would have any expectation of success let alone a reasonable expectation of success. As shown above, the proposed combination fails to teach or suggest all of the claim limitations. As a result, the Examiner has failed to establish a prima facie case of obviousness in this Application.

CONCLUSION

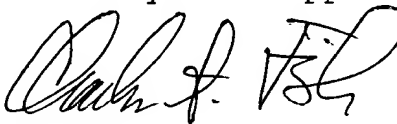
Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read "Charles S. Fish", is written over a horizontal line.

Charles S. Fish

Reg. No. 35,870

February 17, 2006

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